

## Section 3.1

### Fine Guidelines Seem to Overlap

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#### Questions posed at the Roundtable

This document provides guidance on the following questions posed at the Hearing Officer Roundtable:

- When identifying the class of violation, the definitions seem to overlap.
  - What are the determining factors between Class B (formerly *moderate*) and Class A (formerly *serious*)?
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#### Flexible fines

The fine structures for administrative civil penalty actions, found in Title 3, California Code of Regulations (3CCR) section 6130 and 16CCR section 1922, were implemented as a “sliding scale” to afford the county agricultural commissioner (CAC) flexibility in determining the importance or seriousness of the violation. The guidelines cannot be any more specific without limiting CAC discretion and flexibility in dealing with violators.

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#### Class B (moderate) versus Class A (serious)

The basic differences between Class B (moderate) and Class A (serious) fine category (other than Repeat Violation) are:

Class B (Moderate)	Class A (Serious)
Violation posed a reasonable <u>possibility</u> of creating a health or environmental <u>effect</u> .	Violation <u>created an actual</u> health or environmental <u>hazard</u> , and, violating a lawful order of the CAC issued pursuant to FAC sections 11737, 11737.5, 11896, or 11897.

**Note:** No actual damage has to occur for either fine Class. See the Glossary for definitions of *Reasonable Possibility*, *Effect*, and *Hazard*.

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## Fine Guidelines Seem to Overlap, Continued

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### **The fine in the NOPA is presumed correct**

In setting the fine in the Notice of Proposed Action (NOPA), it can be presumed that the CAC:

1. Determined the fine category after first consulting 3CCR section 6130 or 16CCR section 1922.
  2. Considered the overlapping of fine categories and any mitigating factors when making his or her determination about the proposed fine category and/or fine level within a fine Class.
  3. Is properly exercising his or her discretion.
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### **A finding of CAC error must be made to adjust the fine**

Therefore, if a Hearing Officer wishes to reduce the amount of the fine, he or she must show that the CAC incorrectly applied 3CCR section 6130 or 16CCR section 1922 and give the facts supporting that determination in the proposed decision. It is not appropriate for the Hearing Officer to reduce a fine based solely upon his or her discretion or personal opinion.

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### **References**

- 3CCR section 6130, Civil Penalty Actions by Commissioners
  - 16CCR section 1922, Civil Penalty Actions by Commissioners
  - Enforcement Guidelines, Technical Revision, December 2002
  - Hearing Officer Sourcebook, Second Edition, May 1995
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